SPEECH

OF

MR. STILES, OF GEORGIA,

ON

THE RIGHT OF MEMBERS TO THEIR SEATS IN THE HOUSE OF REPRESENTATIVES.

DELIVERED

IN THE HOUSE OF REPRESENTATIVES,

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SPEECH.

Mr. STILES spoke as follows:

Mr. SPEAKER: The course of argument pursued by the gentleman from Kentucky [Mr. DAVIS] who has just taken his seat, renders it incumbent on me to recur briefly to the history of our government, and the nature of the federal constitution. I do so the more cheerfully, as the difficulty which presents itself arises upon the *construction* of a clause in the constitution of the United States; and to arrive at a proper conclusion as to the true intent and meaning of the ambiguous sentence, as well as to determine the conflicting claims of federal and State power, which that ambiguity raises, it seems absolutely necessary to understand, before entering upon the task, the characteristic peculiarities of that constitution, the mode of its formation, and the division of the supreme powers of government between the States in their united capacity, and the States in their individual capacities.

By a vote in Congress of the 4th of July, 1776, the thirteen colonies of Great Britain planted along the shores of the atlantic in North America, became at once thirteen free and independent States.

By this step, which absolved the States from all allegiance to the British crown, "and dissolved all connexion between them and the State of Great Britain, they were not, as has by some been erroneously supposed, reduced to a state of nature; but, under the general obligations resulting from the nature, ends, and necessities of civil society, they remained, until the establishment of State constitutions, (five of which took place during that and the succeeding year,) under their charter governments, subject to all the civil and criminal laws which were not necessarily involved in the change of their political state. I pass over, as immaterial to the present object, the next constitution in chronological order under which the United States existed, the articles of confederation which, derived from the dependent authority of the States, in its operations, acting solely upon the States, and obtaining their obedience only when agreeable to their sovereign will and pleasure, proving, as it did, "inadequate to the exigency, the preservation and the prosperity of the Union" was superseded by the present constitution.

The inquiries which present themselves upon the first glance at that instrument, and which it is essential should be satisfied, are, Whence its origin? Who were the original and efficient parties to the constitution? Was it formed by the several States acting in the capacity of independent sovereigns? or by the people of all the States acting as an aggregate political community? or does that instrument derive all its authority from the people of each State, acting separately in their capacity of primitive sovereignty within their own limits?

But let one of the ablest statesmen our country has ever produced—whose name has been repeatedly invoked during this discussion, and particularly by gentlemen on the other side, as well as one of the constitution's most efficient framers—answer the question:

"It was formed, (says Mr. Madison,) not by the government of the component States, as the federal government for which it was substituted was formed; nor was it formed by a majority of the people of the United States, as a single community, in the manner of a consolidated government. It was formed by the States—that is, by the people in each of the States—acting in their highest and sovereign capacity, and formed consequently by the same authority which formed the State constitutions."—*Appendix, note* 1.

The people of the respective States, then, in their sovereign capacity, have constituted two agencies for the management of their affairs, one, a *special* agent—to wit, the general government—with power to perform certain specified things; the other—to wit, the State governments—their *general* agent to act for them generally, with certain exceptions contained in their bill of rights, subject to an agreement with the other States, that their general agents should not do certain things which might interfere with the objects for which the special agent was constituted.

An examination of the constitutions, the respective authority by which these two agents are governed, will show at a glance the different nature of their powers; that of the *general* agent—the constitutions of the respective States—will be found in the nature of restrictions or limits to the exercise of power, leaving all matters not excepted subject to

the action of the legislature; whilst that of the *special* agent—to wit, the general government—consists of special grants, expressly enumerated in the constitution, or vested in Congress as necessary to effectuate the express grants. To ascertain what powers belong to the federal goverument, you do not, as in the case of the State governments, ask what powers are prohibited, taking for granted that all others are given; but you ask what are given, taking for granted that all others are prohibited.

Having ascertained the nature and extent of those powers, let us see what objects are committed to the control of the respective governments. The one division will be found to contain powers local and peculiar in their character, the internal affairs of the States, the domestic safety and tranquillity of the citizens, which the peculiar interests of the States require to be exercised by each State, through a separate government; the other division embracing those powers which are more general and comprehensive—viz: war negotiation, commerce, justice, (so far as national objects are concerned,) and which can be best exercised by each State, throughout a united and distinct government.—*Appendix, note* 2.

Such is the nature, intent, and objects of the powers conferred by the people of the several States on their respective agents, and no one can examine these limits and grants, without being struck with the care and circumspection with which they are adjusted. And that they have dispensed most liberally on the special agent the general government, all the powers necessary for the accomplishment of the legitimate objects of its creation, as manifested in the preamble, is not only obviously apparent, but a fact, the correctness of which, fifty years of unexampled national prosperity will attest.

To see that these grants of power to the agent (bestowed for the benefit of the *grantor*, *not* the *grantee*, it will be recollected) are amply full, whilst they are most strictly defined. What power necessary for the management of *foreign* affairs, either in *peace* or in war, for the regulation of commerce, the preservation of harmony, or the distribution of justice, which has been denied? And where the power over the internal affairs of the States to command their legislation, control the suffrage of their citizens, or in any way interfere with the rights reserved to them or to the people which has been granted? To examine the instrument still more closely, it will be found that its far-sighted framers have weighed each specification of power with scrupulous exactness; thus closing the door as effectually as human language could do it, to the exercise of any latent power or unbounded implication. It is true, Congress is authorized "to pass all laws" for carrying these powers into effect, because the people in their original capacity pass no laws but only make constitutions; but does that confer on them any additional substantive power? if so, then it is not—as they have endeavored to teach us—a limited instrument. Does it give uncontrolled discretion to the selection of whatever means they pleased for executing those powers? If so, then they would thus have expressed such intention by the phrase, "*to use and exercise all powers incident to the foregoing powers.*" The words "to make all laws," were simply declaratory of an authority which they already possessed, and which they could have exercised in the absence of such a provision; being an authority which would have resulted to them by unavoidable implication in the execution of the powers of the government.

The object of that clause, so far from extending the boundaries of authority, it cannot but be evident to every unprejudiced mind, was to narrow this discretion of Congress as carefully as discretionary power can be limited, as to the selection of its means in the exercise of the enumerated powers. "Had they attempted, (as one of its most efficient framers states) to enumerate the particular power or means, not necessary or proper for carrying the general powers into execution, the task would have been no less chimerical; and would have been liable to this further objection—that every defect in the enumeration would have been equivalent to a positive grant of authority." To save the constitution from violation through this clause, (this apparent breach,) its framers have thrown around it expressly and impliedly every barrier which prudence could dictate or ingenuity invent. They have guarded it expressly by declaring the object of those laws to be to carry into effect *only* the "*foregoing powers*" therein immediately preceding; and also, that the laws themselves for that purpose should be both "*necessary and proper.*" They have guarded it *impliedly* in destroying implication; by special enumeration; by carefully inserting subordinate powers, which, in the event of ther omission, might have been legitimately deduced from the express grants. That whilst the power to fix a standard of weights and measures; to regulate the value of money, and establish a uniform systemof bankruptcy,—might well be considered as appertaining to commerce, yet they are each specifically mentioned; thus showing the studied intention of the framers of the constitution, to leave as little to construction as the imperfection of language would permit. From this hasty view of the history and nature of our government, it results—

1. That our constitutions of government, both State and federal, were alike formed by the people of the several States; that the authority of constitutions over government is not more indisputable than that of the people in their sovereignty over constitutions; and, consequently, that it is incompetent for a branch of the government, created by that constitution, to determine the powers which belong to its creators.

2. That the constitution of the general government is a limited and definite instrument; that to supply its defects by assumption, or enlarge its powers by construction, instead of a resort to constitutional amendments, as therein pointed out, is contrary to its letter and spirit, and subversive of the ends of its creation.

3. That the general government, though limited, is a complete government, sufficient for the ends for which it was created, it can accomplish all its legitimate objects, without the legislative aid of any other political body; and has therefore no reason or right to command or direct the legislation of the States.

4. That in conflicts between the general and State governments, as to the construction of power, there is no common umpire but the people of the several States; that they are the permanent tribunal and source of all political power; and though they may often delegate portions of that power, must still remain the ultimate arbiter, as they were the primary fountain of all knowledge and of all authority.

These four propositions constitute the main characteristics or leading features of our government. I introduce them not as premises whereon to base an argument, but simply as safe and important guides to direct our steps in tracing out the boundaries of federal and State power, as established by the con-

stitution, since the correctness or the error of our course of interpretation will be immediately apparent, as that course is discovered to accord with, or run counter to, these true and unvarying characteristics of our system.

With these preliminary remarks, preparatory to a proper consideration of the subject now before the House, what is the question? The question upon which we are at issue is, whether or not the 2d section of the apportionment law of 1842 conflicts with the constitution?

How have the gentlemen in the opposition met this question? From the effort of the gentleman from South Carolina, [Mr. CAMPBELL,] who first advocated the law in 1842, and who has recently battled so manfully for the paternity of his bantling, down to the gentleman who last addressed the House, the whole argument has been based upon a single, false, and untenable proposition, viz: That the right of a State, or the people of a State, to be represented on this floor, is derived from the constitution of the United States. From this, they deduce two other equally untenable propositions:

1st. That the 4th section, 1st article of the constitution—"the authority under which this law was framed"—embraces the power in Congress to district a State.

2d. That, by that section, "supreme supervision and control" is vested in Congress over the election of representatives to this hall.

To the first proposition—that the right of representation is derived from the constitution: What are the great rights involved in this issue, and which have, as its opponents contend, by that law been invaded? They are the rights of suffrage and representation—the most important and sacred rights of freedom; rights which, in all governments where power is retained in the hands of the people, rest with every constituent member of the social compact. Rights based upon, and inseparable from, that fundamental principle of our republic—the principle of self-government"—and belonging to that class of "inalienable rights" with which "man is endowed by his Creator," the people have been ever ready to peril their liberty and their lives rather than surrender.

To whom do these rights belong? They are personal rights, and must, of course, belong to the people.

Who formed the constitution? The people, either of the several States, or the people of the United States. Under any construction, it was formed by the people of this country. These important rights, now in jeopardy, belong to those who formed the constitution, called it into being, and gave to it all the powers which it contains; and how, then—upon what principle is it that the people can derive powers from it? This is the proposition upon which their whole argument rests; which they have not even attempted to sustain by any reason or authority, but which they are so anxious we should admit; or, as the gentleman from Tennessee [Mr. MILTON BROWN] a few days since expressed it, "bear in mind." Let me tell the gentleman from Tennessee that that expression did not convey truly his idea; he did not mean we "must all bear in mind;" but we must all *admit*. Admit their premises, and, I suppose, they can establish their conclusions. Archimides could have raised the world, if he could but have found a spot whereon to rest his lever.

Let me say to gentlemen of the opposition, one and all, we make no such admissions; we challenge them to the proof; and, until it can be shown that a creator can derive power from a creature, we will not entertain so absurd a proposition.

The gentleman from Kentucky farther states, that, "previously to the adoption of the constitution, the people had no right to send members here." What does such an assertion mean? It either means nothing, or it signifies something beyond my comprehension. What would he be understood by "*here?*" Does he mean this Congress—this Congress composed of a Senate and House of Representatives? Before the adoption of the constitution there was no such Congress. Does he mean the Congress of the confederation? Were there no members to that body? I bring history to issue with the gentleman. Or does he mean they had no *right* to their seats? Had the representatives to the Congress of 1776, who declared our independence, no *right* to their seats, or the delegates to the convention who formed the constitution no authority to act; and are we, therefore, not now entitled either to our independence or our constitution?

Sir, the people have a *right* to do anything and everything which, by the constitution or laws, they have not prohibited themselves from doing. They may *limit* the exercise of their sovereign power as they please, but they can *derive* no power, because they are the *source* of all power.

The gentleman seems fond of illustration, and I will give him one exhibiting the absurdity of his position. If the government of the United States were to stipulate with that of Great Britain, that a duty not exceeding 20 per cent. would be laid on her manufacturers introduced into this country, according to the gentleman's position the United States would be deriving from Great Britain the power to lay duties; we should be *deriving* power from them, instead of *placing a limit* upon the exercise of our *own* power.

The only exception to the indulgence of naked assertion in support of this point, arose with the gentleman from Vermont, [Mr. COLLAMER,] who chose to inform us of his professional honors; and who, as he made the announcement that he had once occupied the bench, seemed, indeed, to feel, as was once said of another, that when the spotless ermine of the judicial robe fell on him, it touched nothing not as spotless as itself. He has attempted to sustain the position by the following inference: that, as the State constitutions contain no grants of power over the election of representatives to Congress, *ergo*, that power must be derived from the constitution of the United States.

A moment's reflection would have spared the learned judge the search into the constitutions of every State in the Union. He had forgotten the nature of State constitutions, that their powers, as I have already said, are not in the nature of *grants*, but of *limits and restrictions*, leaving all matters not prohibited subject to legislative action.

That such is the nature of State constitutions, no gentleman will, I am sure, pretend to contravert; and the fact alluded to by the judge, that the State constitutions make no mention of the subject, renders the conclusion irresistible that there are no limits or restrictions to the exercise of that power; and that, consequently, the whole matter is subject to the action of the legislature.

I come to the second false proposition, viz:—that the fourth section of the first article of the constitution embraces the power over the subject of electing representatives; or, in other words, of districting the States. If the fourth section embraces that power,

will gentlemen inform me what power, or power over what subject, does the second section of the first article comprehend? That section provides that "the House of Representatives shall be composed of members chosen every second year by the people of the several States; and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature."

The right to vote, and the qualifications of the voter, are indisputably fixed by that section—the former residing with the people, the latter with the States. But it may be urged that the second section of the apportionment law does not conflict with this section, because it does not propose to interfere with either the *right* to vote or the *qualifications* of the voter. But what does that law say? "They shall be elected by districts of contiguous territory—no one district electing more than one representative." By the constitution, each voter, having the requisite qualifications to vote for members of the most numerous branch of the State legislature, has a right to vote—for what? One repretentative? No; for the whole number of representatives to which such State is entitled. To prevent the voter from voting for all, and compelling him to vote for one,—does not that interfere with the right of voting? To put the inquiry is alone sufficient.

Again: if a single representative is elected by a district, the qualified residents of the district can alone vote for him. It follows, then, that every man who is in his own State, but happens beyond the limits of his district at the time of election, is disfranchised. Does it not, then, interfere, with the *qualifications* of the voter, by annexing to the list of those qualifications, already laid down, the additional requirement that he shall be the resident of a particular district?

This section not only clearly exhibits the unconstitutionality of the second section of the apportionment law, but establishes with equal clearness the complete control over the election of representatives to be vested in the legislatures of the several States, setting no fixed standard of qualifications, which should be uniform throughout the States, for the qualification of electors, but submitting the whole matter to the States, whether they should choose to admit to the enjoyment of the elective franchise, freeholder or pauper, white or black, without limit as to property or color—a rule which should remain through all time, and subject only to the interest o caprice of the States.

Let us examine that section of the constitution under which the advocates of the apportionment law set up the claim on the part of Congress to the exercise of this right; that—the fourth section of the first article—declares that "the times, places, and manner of holding elections for senators and representatives shall be prescribed in each State by the legislature thereof; but Congress may at any time, by law, make or alter such regulations, except as to the places of choosing senators." What do time, place, and manner mean? Time, the day of election; place, the election precints; manner, the management of the polls. Do they mean anything more? Can the wildest constructionist make anything more out of them? Will it be pretended that the power to district a State is comprehended under these terms? It is not, of course, included under the words "times and places;" and it is equally clear that it cannot be embraced under the word "manner." The "manner" of holding an election is one thing; the persons to be elected, their qualifications, and numbers, totally different things.

"Shall be prescribed:"—does not that word "prescribe" condemn the construction contended for by the friends of the apportionment law? Prescribe what? The right of electing representatives? or the right of districting a State? Who ever heard of *prescribing a right?* It is an absurdity in terms. You may *grant* a right, or *confer* a right; but you can only *prescribe the manner* in which a right is to be exercised.

The right to vote, and the qualifications of the voter, are fixed by the second section; and the *manner* or details of the elections settled by the fourth section.

The difficulty into which we have fallen, has arisen from confounding the two sections; from blending the "times, places, and manner" *of electing*, with the "times, places, and manner" *of holding elections.* The "times, places, and manner" of electing had been already fixed by the second section: time, every two years; place, the State; manner, by the people. But the "times, places, and manner" *of holding elections*, the election days, precincts, and details, were alone settled by the fourth section.

But the authority of Mr. Madison's name is invoked in favor of the construction that the fourth section embraces the right, on the part of Congress, of districting. Sir, Mr. Madison never made such an assertion. In illustrating the abuses which might result from the exercise of this discretionary power, he incidentally, and perhaps unguardedly, made use of an expression which the advocates of the law of 1842 have attempted to torture into such an opinion. Such a question (whether the clause embraced the power on the part of Congress) was neither directly put to him, or by him directly answered. We are, fortunately, not left in the dark as to the opinions of the framers of the constitution on this point. In the convention of Massachusetts upon the adoption of the constitution, the question was directly put to the Hon. Rufus King, (and although the convention which formed the constitution constituted the ablest body of men that ever met together in the world, in point of intelligence Rufus King had not a superior in it,) and he replied that the fourth section "extends to the *manner* of elections, and not to the rights or qualifications of the voter."—*See appendix, note* 4.

Again: Mr. Iredell—one of the distinguished framers of the constitution—when, in the convention of North Carolina, he was asked whether, under the 4th section, Congress could not extend the time of electing members to twenty years, replied, that that had been "fixed by the 2d section to two years;" that the power under the 4th section "extended only to the time of *holding*, the place of *holding*, and the manner of *holding* the election."—*See appendix, note* 5.

By reference, then, to the 2d section, 1st article, of the constitution, and the construction I have given it—to which, I presume, there will be no dissent—I have shown:

1. That the *right* of voting is with the people; that, from the nature of our government, it belonged to them, as the source of all power; and the constitution shows they have not parted with it.

2. That the control over the *qualifications* of voters has been deposited with the legislatures of the States.

These clearly establish two others:

1. The unconstitutionality of the apportionment law, which would confer that power upon Congress.

2. It mutually sustains and is sustained by my first proposition, viz: That our constitutions of government were formed by the people of the States; that the authority of constitutions over government is not more indisputable than that of the people in their sovereignty over constitutions; and that it is incompetent for a branch of government created by that constitution to determine the powers which belong to its creators.

I approach the third untenable proposition—that the 4th section confers on Congress supreme supervision and control over the election of representatives. To continue the consideration of the clause: "*shall be prescribed in each State by the legislature thereof.*" Here is the grant of power made by the people of the States to the legislatures of the said States. Can anything be more clear, more explicit? It is absolute: it is coupled with no condition or modification. The States, then, by this portion of the clause, had the right in question. Have they ever parted with it? How have they become divested of it? Why, it is answered, "Congress may at any time make or alter such regulations." What kind of a right is this? Does this confer an exclusive concurrent or contingent right on Congress? That it is an "*exclusive*" right, will not be pretended. Why have the States, for upwards of fifty years, from the commencement of the government to the present, been in the sole, exclusive, and uncontrolled exercise of it? If so, where was the necessity of making it imperative on the States to prescribe any regulations whatever on the subject? and what the object of conferring on Congress the supervisory power embraced in the last clause?

Is it a "*concurrent*" right? Would the framers of the constitution have thrown such a bone of contention between the parties? Would they have invited a contest for important rights between the State and federal governments which would have burst our Union to fragments? But, if they had meant it to be concurrent, would they not have made use of the *same* term in each grant of power, and not taken the particular pains of altering the phraseology from "*shall*" to "*may*"—from imperative, where the States are spoken of, to permissive, where Congress is mentioned?

If this was not an exclusive or a concurrent right upon the part of Congress, it results, from inevitable necessity, that it must have been simply a "*contingent*" right—a right to be used only upon the happening of a contingency; or, as it has been called, an *ultimate* right; to be exercised only in the last resort by Congress, to preserve the government—a *self-preserving* right, as it has been also styled, to be enforced only in the preservation of national existence. It would be absurd to say, that although the constitution has thus strictly and imperatively enjoined upon the States, the performance of this duty, yet Congress might, before the States had time to do it, relieve them from it, by doing it themselves. But "*any time*" is an unqualified expression, it may be urged; but to give it such an interpretation would destroy the force of the construction; since, if the phrase be taken in an unlimited sense, then it is unlimited as well to the past as the future. Congress could have exercised as well at "any time" previous to the exercise of such a power by the States, a construction which would subject the whole clause to manifest absurdity, since the power not only to make, but to *alter* is given, and an alteration presupposes a prior existence; before there can be an *alteration*, there must be an *existence* of regulations. What regulations may Congress at any time make or alter? The former part of the clause answers the question. Such regulations only as the legislature of each State is required to prescribe, concerning the times, places, and manner of holding elections; and when can Congress make or alter them? "at any time?" At any time previously? No. At any time "concurrently?" No; but at any time *contingently*. At any time when the States shall neglect, or refuse, or discharge with infidelity the trust confided to them. It is evident, then, that the only power or right which Congress possesses over the subject is contingent in its character; was conferred for the purpose of arming the federal government with the means of preserving its own existence; and until that has been endangered by the omission of the States to provide for the choice of their federal representatives, no pretexts whatever exist for its interference.

In other words, it is nothing more nor less than the right of *self-defence*; which, whether in persons or governments, is but a contingent right, to be exercised only upon the happening of a contingency—whenever the security of persons or governments is assailed. By the law, every individual is armed with the right of self-defence—a right to the use of force or violence for the preservation of personal security—a right of which he is at all times possessed, but which he never can exercise except that personal security be invaded; and were he to attempt its use, under any other circumstances, he becomes the aggressor, and is subject to the penalties of violated law.

By the constitution, the government, by this clause, is invested with a right of self-defence—a right which she at all times possesses, but which can only be exercised when the national security is endangered, and which, if the government attempts to use under any other circumstances, she becomes a usurper, and is liable to have her mandates disregarded—the only penalty of a violated constitution. That this is the correct and proper interpretation of the disputed clause, not only common reason shows, but is established clearly—

1st. By the rules of construction as established for the constitution.

2d. By the history of the clause itself.

3d. By contemporary exposition, and subsequent authority.

This interpretation is sustained by the rules of construction laid down and adopted for the construction of that instrument: and what are they? They are derived from various sources.

From the common law.

From clauses and expressions in the constitution.

From the general end and design of the government established by the constitution.

What are the rules of construction as derived from the common law? In the first place, considering the constitution in the light of a contract. It is a cardinal rule in the construction of all contracts—and one especially applicable to an instrument drawn with the conciseness and precision of the constitution of the United States, in which every word has a meaning, and not one word is superfluous—*that effect be given to every* clause and word in it: but the first and enacting part of this clause (the most prominent and effective part of every law) must be entirely superseded by yielding to the construction contended for by the advocates of the apportionment law; or, considering the clause as a *simple*

statute, or portion of the common law, what would be the rule of the construction as applicable in such an event? An obvious conflict between the first and last clauses of the same section; between the enacting clause, and the proviso. What are the rules of interpretation?

To reconcile them, if you can, (and which in this case can be done only by adopting the interpretation I have made.)

If they cannot be reconciled, then laws, or acts, being in the nature of *deeds*, the first clause must stand, to the rejection of the last—the enacting clause prevail, and the proviso be excluded.

By the first, or enacting clause, the power in dispute is given to the States; and if any portion must necessarily be rejected, it must be the latter, by which the power is conferred on Congress.

The second branch of rules of construction are those derived from clauses and expressions in the constitution; and are there any similar clauses and expressions in it? What is contended for in the construction of this clause of the constitution, by the advocates of the apportionment law? It is a control by Congress over the States—the control of the national over State authority. Are there any similar clauses in the constitution? I have searched the constitution in vain, if there can be found in that instrument, from its Alpha to its Omega, more than one single clause, which can be tortured into a control given to Congress over the acts of the State legislature; and the reason for that most singular and anomalous provision is, that it is a matter relating to the national revenue, which, by the constitution, is intrusted to Congress. It is the single instance where duties on imports are laid by a State for the use of the treasury of the United States. What, then, are the terms in which that power is couched?—for, as intelligent a body as were the framers of the constitution, we will at least do them the justice to believe that where they intended to confer similar power, they would use similar language. This provision is to be found in the 10th section, 1st article, and 2d clause, in which a State solicits the permission of Congress to lay imposts for executing its inspection laws. And in what terms is this supervision on the part of Congress over State legislation expressed? Is it "Congress may at any time, by law, make or alter such regulations?" No; but "All such laws *shall be subject to* the revision and control of the Congress." How wide the distinction between the expressions "may" exercise a power, and "shall be subject to" its exercise! The former phrase is *permissive*, clearly implying that the higher power is behind; but the latter, from the very meaning of the terms attached to and qualifying the regulations, *subject* to Congress—or, as the word is defined, "submissive, under the dominion of, enslaved"—shows the possession of *supreme* control in Congress, and that there is no higher power behind. The great difference in construction between the opponents and advocates of the apportionment law is, that by the former it is held as a contingent right, which can be exercised only upon the occurrence of a contingency; by the latter it is contended that the clause confers on Congress the supreme power and control, and which is not dependent for its exercise upon the happening of any contingency. In other words, they claim and contend for precisely such a power as is, by the constitution, conferred on Congress in the 10th sec. 1st article, relative to the laying of impost duties on exports and imports by a State, viz: *supreme supervision and control.* That this is what they seek, is openly avowed. Now I simply ask, if such was the case, why did not the framers of the constitution so express it? If they meant to confer the *same* power, why did they not use the *same* language? If they had meant, as the advocates of the law contend, to give Congress supreme power over the regulations of elections made by the States, why did they not say, as in relation to imposts by a State, such laws "shall be subject to the supervision and control of the Congress?" They have made use of no such expression; and the conclusion is irresistible that they intended to convey no such power.

The third rule, as laid down for the construction of the constitution, is such as is derived from the general end and design of the government; as it must necessarily be supposed to have been intended that all the provisions should conspire to produce that end.

The general end and design of the government cannot be more safely gathered, or satisfactorily ascertained, than by reference to the context of the constitution; while the importance of examining the preamble for the purpose of expounding the language of a clause, has been long felt, and universally conceded, in all political, as well as judicial discussions.

"To form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence and general welfare, and secure the blessings of liberty to ourselves and our posterity," were the momentous objects which led to the political union formed by the federal constitution. How does the construction of the clause contended for by the advocates of the apportionment law comport with these objects, which constituted the general end and design of the government? Is it "to form a more perfect union" to exclude from that union, (or the very essence of it, union of legislation,) several of the high contracting parties that created it, by the rejection from the floor of the House, of their duly qualified representatives, in disregard of the solemn instrument of that union, which declares that there *shall* be a House of Representatives, in which each State *shall* be fully represented, without which there can be no legislation, and consequently the most important branch of a free government totally destroyed? Is it, "to establish justice" to assume at least a doubtful power without an occasion or necessity for its exercise—issuing a mandate to the States involving a disfranchisement for not performing an impossibility, should the local legislature refuse what Congress has no right to command; and at length, attempting to force the obedience of such States to laws which they had no participation in making? Is it "to insure domestic tranquillity," that the federal government will presume to quit the sphere in which the constitution has placed her, and instead of devoting her energies to those external objects confided to her care, exceeds her jurisdiction, and breaks down those barriers raised by the constitution for the defence of domestic rights reserved to the States; and not only takes possession of the most sacred and important of them—the right of suffrage—but commands the sovereign powers exclusively entrusted with its control, to bear it forth, and place it at the feet of the central power? Is it "to provide for the common defence," to transform our confederated republic, exercising a few delegated powers, cautiously guarded and restricted into one great consolidated government, ruled by a majority of interest, without an earthly check for the protection of the

minority, and where—dependent for good or for evil purely upon the character of those who administer it—the oppressed minority must "either suffer while evils are sufferable, or right themselves by abolishing the forms to which they are accustomed?" Is it "to promote the general welfare," to change a government limited by a written constitution, and based in the affections of the people, into the all-absording despotism of an uncontrolled majority, with the right, by force and arms, to crush all opposition to its assumptions, and which will acknowledge no other terms of warfare but unqualified submission, or the total annihilation of the rights of the States and the sovereignty of the people? Is it "to secure the blessings of liberty to ourselves and our posterity" to establish a despotism? Is this the duty we owe ourselves, or the gratitude we feel for those from whom we received the precious inheritance? Is this our fidelity for the trust reposed in us for the benefit of posterity, that, instead of obedience to the sublime patriotism whose impulses were not confined to the present, and knew no bounds in the future, there shall proceed from this "temple of freedom," the fiat which shall ring throughout those hills and valleys which have been moistened by the blood of patriot sires, the last knell of departed liberty? Thus have I attempted to show that the interpretation of the ambiguous clause for which I contend (viz: that it is an extreme or ultimate power, to be exercised only by Congress in case of its necessity to preserve the government from dissolution) is sustained by the first test applied to it, viz: the rules of construction as applied to the constitution.

2. It is sustained by the history of the clause itself. On examining the history of the formation of the constitution, it will appear that, on the 23d and 26th July, 1787, the convention referred to a "Committee of Detail," (*appendix, note* 6,) the resolutions embracing the substance of the powers to be conferred on the general government, and also the drafts of constitutions offered by Messrs. Pinckney, Randolph, Patterson, and Hamilton, and out of which the committee was directed to prepare and report a constitution in accordance with the resolutions. On the 6th August, this committee reported a constitution, in which is to be found the following clause:

"The times, places, and manner, of holding the elections of the members of each House, shall be prescribed by the legislature of each State; but their provisions concerning them may, at any time, be *altered* by the legislatute of the United States."—*See appendix, note* 7.

Neither in the resolutions nor drafts of constitutions submitted to the committee, nor even in the reported draft, does there appear conferred upon Congress any power to *make* any regulations respecting the elections of members of the House. It is evident, then, that there was no original intention, on the part of the framers of the constitution, to confer on Congress any essential power over the subject. It was not until after the principal features of the constitution had been discussed and determined, and when each article and clause was taken up separately, to receive the finishing touch, that the difficulty of the failure or refusal on the part of the States to perform their duty in the matter presented itself, (suggested, perhaps, by the failure of Rhode Island to send her delegates to Congress,) and in which event the legislative power of the country would cease, that it was thought proper, as the debates of the 9th of August show, to confer upon Congress the contingent power alluded to, with the view alone of preserving the existence of the government.

The interpretation contended for is farther sustained by contemporary exposition and subsequent authority.

It will not, I presume, be denied that, in a dispute as to the meaning of a particular passage in the constitution, no better rule for our government can be adopted—no higher evidence desired, than the journal and debates of the convention. Let us then summon to our councils, as far as practicable, those who were engaged in framing this deed, and learn from their testimony what were the intentions of its authors. Let us, then, examine the opinions of those who adopted it, and discover the spirit and understanding with which it was accepted.

The first piece of contemporary exposition to which I refer, as sustaining the construction contended for, is that of Mr. Madison in a note of his own, made at the time this clause was under discussion in the convention which formed the constitution:

"This was meant (he says) to give the national legislature a power, not only to alter the provisions of the States, but to make regulations in case the States should *fail or refuse altogether.*"—*See appendix, note* 8.

And such is the substance of the debates upon the point.

The next contemporary exposition is that of Mr. Nicholas, (a member of the convention,) and who, in reply to the objections of Patrick Henry in the Virginia convention on the danger of this clause, said:

"If the State legislature, by accident, design, or any other cause, would not appoint a place for holding elections, then there might be no election till the time was passed for which they were to have been chosen; and as this would essentially put an end to the Union, it ought to be guarded against, and it would only be guarded against by giving this discretionary power to Congress of altering the time, place, and manner of holding the elections."—*Appendix, note* 9.

The next evidence to the point, from the framers of the constitution, is that of Alexander Hamilton:

"Its propriety rests upon the evidence of this plain proposition—that every government ought to contain in itself the means of its own preservation." * * * * "It will, I presume, be as readily conceded that there were only three ways in which this power could have been reasonably organized; that it must have been lodged wholly in the national legislature, or wholly in the State legislatures, or primarily in the latter, and ultimately in the former. The last mode has, with reason, been preferred by the convention. They have submitted the regulation of elections for the federal government, in the first instance, to the local administration; which, in ordinary cases, and when no improper views prevail, may be both more convenient and more satisfactory; but they have reserved to the national authority a right to interpose whenever extraordinary circumstances might render that interposition necessary to its safety."—*Appendix, note* 10.

Authority upon this point might be multiplied by referring to the debates of the Massachusetts convention, in which the same views are expressed by Samuel Adams; and in those of New York, where the same ground is taken by Mr. Jay, (*Appendix,*

note 11.) But the Federalist, while it is full and explicit upon this point, must be an unexceptionable witness. It is known that these essays were the work of three statesmen, who, whatever may have been their subsequent opinions, were, in the convention, the strenuous supporters of the powers of the new government. To them belong the unquestionable advantage and authority, that, having been written by the most able and efficient framers of the constitution, who were the most extreme centralists of the day; having been published before its adoption, and before its functions and provisions were called into activity, before party spirit existed, or interests, personal, local, or national, became intermingled in the questions arising out of its claims of jurisdiction, before any extraneous bias and pride of opinion could be engaged in its construction, their views may be considered as fair and impartial, and as exhibiting the real scope and purport of the instrument, and the intentions of those engaged in its formation.

Upon the point of subsequent authority, I refer to the commentaries of Chancellor Kent and Justice Story, where the same views are advanced.—*See appendix, note* 12.

Having, then, the opinions of those who were engaged in framing the instrument, and discovered that our interpretation is fully sustained by the intention of its authors, let us refer to the other branch of the testimony, and examine the views of those who adopted it, and discover the spirit and understanding with which it was accepted.

On the 17th September, 1787, the convention completed their labors, and delivered the result of their deliberations to Congress, to be transmitted to the legislatures of the several States, "in order to be submitted to a convention of delegates, chosen in each State by the people thereof." It is from the proceedings of these State conventions, that we are to look for the spirit and understanding with which it was accepted. I refer to the *ratifications* of the States. Massachusetts proposed the following amendment, and her example was followed by six others:

"That Congress do not exercise the powers vested in them by the fourth section of the first article, but in cases where a State shall neglect or refuse to make the regulations therein mentioned, or shall make regulations subversive of the rights of the people to a free and equal representation in Congress, agreeably to the constitution." And that of the other States is to the same effect.—*See appendix, note* 13.

Such was the understanding of the constitution by the States when they accepted it; such was the construction of the compact made by a majority of the parties to it, and meeting with no dissent from the other parties. Upon what principles of law or equity, justice or good faith, can a different construction be now given to it? No principle is better settled, or more universally admitted, than that every contract, every instrument, to which there are two or more parties, is to be construed in the sense in which those parties understood it at the time they entered into it; and this is especially true in reference to our constitution, which was spoken into existence by the mighty voice of the people, derived its being from their ratification alone, and was created—*ratified* as they understood it. The constitution, when first prepared and presented to the people of the States, "was but a mere proposal (a recommendation) without obligation, or pretensions to it." "The people were at perfect liberty to accept or reject it, and their act was final."

The instrument received its validity, binding strength, solely from the *ratification* of it by the people, or, in its own language, by their "ordaining and establishing it." And what were the constructions given to the constitution, but the manner of ratification, the intent and meaning with which the people of the States ordained and established the constitution. It was the construction which they attached to the instrument, and in which construction alone they accepted it. Had that construction been different from the *true* intent and meaning of the constitution, would the other six States have assented to the instrument, and received those making such constructive ratifications? Clearly not. And had these ratifying States understood the clause to contain the power now claimed for it by the advocates of the apportionment law, would they have ratified it? Clearly not; and as, in either event, there would have been no constitution without such a construction, it results that it was the true intent and meaning of the clause made by one, and assented to by the other; and whatever ambiguity or difficulty there may be as to the *other* clause or parts of the instrument, *this* clause, at least, is safe from doubt; this has a settled meaning, which must remain coexistent with the instrument itself. To pursue any other course, to place that construction upon it, for which the friends of the apportionment law contend, would be to wrest from the States by intentional fraud, power which they not only never intend to give to Congress, but which a majority of them expressly objected and refused to confer at the time of its adoption.

If, as history teaches, that constitution (such was the opposition to innovation) was, during its ratification, forced heavily through the State convention, even under the most solemn assurances and stipulations that it contained no secret mechanism, nothing concealed or disguised,—what would have been its fate could the people have imagined that it was a stupendous *fraud*, concealing doctrines which might (by implication) violate every express and undermine every reserved right of the States, and prostrate at the feet of usurped authority those principles which all hold sacred and inviolate? The answer is, it never would have been ratified; and as it never could have received such a construction *then*, it should not receive it *now*, as well for reasons I have advanced, viz:

Because it is defeated by the rules of construction laid down for the constitution;

By the history of the clause;

By contempory exposition and subsequent authority;

As that it is repugnant to my second proposition on other characteristics of our government, viz:

That the constitution of our general government is a limited and definite instrument; that to supply its defects by assumption, or enlarge its powers by construction, instead of a resort to constitutional amendments, as therein pointed out, is contrary to its letter and spirit, and subversive of the ends of its creation.

But my colleague, in support of the position that the absolute power over elections is vested in Congress, referred to the amendment proposed by Mr. Burke of South Carolina, in the Congress of 1789, "to limit the exercise of this power on the part of Congress;" and, with an air of triumph, contended that the defeat of that proposed amendment "clear-

ly showed that it was then understood that Congress possessed the absolute power," and that it was not deemed advisable to yield it to the States.

If I have misapprehended the object of my colleague in referring to Mr. Burke's resolution, I will afford him the opportunity to set me right upon the subject.

[Mr. STEPHENS here took the floor, but was not understood to disclaim that such was his object.]

Then, I state that my colleague has either read, or he has not, the debates which took place in Congress upon the presentation of that amendment. If he has not read them, I commend them to his immediate perusal; and feel assured that, had his investigation extended that far, he would have been spared the trouble of any reference to them; but if, on the other hand, he has read them, he cannot avoid the imputation of having attempted to impose upon this House incorrect reasons for the defeat of that resolution. He cannot but know that Mr. Burke's amendment failed, not because it was understood that Congress possessed, and ought not to yield its power over elections; but, among other good reasons, the principal one was, to use the language of the debate, that "*no danger was to be apprehended that Congress would never exercise that power.*"

It is to me a source of regret that the course which my colleague has pursued on this question, has made it necessary to advert to the unenviable position which, in regard to it, he has alone chosen to assume. I regret that he should have thought it necessary, by a labored speech, to have convinced us of his want of title to his seat, when that end could have been so much more effectually and consistently accomplished, without the utterance of a single word, by his absence from this hall. But I regret, more than all, that, with a declaration on his lips that he is not entitled to his seat, he should still undertake to vote, act, and receive the emoluments, to which a *right* to that seat *alone* entitled him. There was a time when such assurance would have been considered at least a want of delicacy; when such a difference between opinion and action would have been held at least a want of consistency; but those days, I suppose, are gone, and the time arrived when such unblushing affrontery is deemed, perhaps, an exhibition of "moral firmness," surpassing that which distinguished General Jackson at New Orleans, and equalled only by that of the judge who pronounced the infamous sentence upon him.—*Appendix, note* 14.

My colleague says that this is a question for the judgment of this House; but let me tell him, in all kindness, that he has, in my opinion, mistaken the tribunal in which such a question was properly cognizable. His position involved a question, let me say to him, not to be tried and decided in this House, but alone to be determined *in foro conscientiæ*. Before that tribunal do I arraign and charge him with the commission of two high and enormous offences.

He cannot but know, from the study of that profession for which he was educated, the nature and criminality of the offence; and I therefore leave him to name it, while I charge him with *taking* that to which he says, and perhaps thinks, he knows that he has no right, or even "color of title."

Again: he cannot but know, from the profession he has followed, that, to participate in the deliberations of this body, with no right to a seat, is against the constitution; and I thereupon charge him with the offence, leaving him to name it, which arises out of the *violation* of an instrument which he has *sworn* to support.

Mr. STEPHENS, on leave being given him, asked if the gentleman would undertake to be the keeper or the judge of his conscience.

Mr. STILES replied: God forbid that I should ever be the keeper of *such* a conscience!

Yes, sir, my colleague, with a declaration on his lips, and a feeling in his heart, that he is not entitled to his seat—whilst, consequently, in the very act of violating the constitution of his country—lays his hand upon the word of life, and calls upon God to help him, or not to help him, as he may or may not support that instrument. If not before high heaven—if not before the world, at least in the silent workings of his thoughts, he must plead guilty! guilty! Sir, I dismiss him; and without presuming to be his "judge," I may say to him, with as deep sincerity as ever it was pronounced from the bench to a condemned criminal, "may God Almighty have mercy upon your soul!"

To return to the argument. So far, I have dwelt upon the power itself. I now refer to the manner of its exercise. I have attempted to show, that the power in question was a contingent power, to be used only in the event of a contingency; and as no contingency, it will be pretended, has occurred, its exercise at this time is consequently unconstitutional; but in the next place I will endeavor to show—

That the manner of its exercise, by the act of 1842, is unconstitutional.

How is Congress to exercise the power when the contingency occurs? The article 1st, section 4th, answers the question. "Congress may, at any time, by law, make or alter such regulations." Congress, "*by law*," not by *command*—by a *law of Congress*, not a law of the *States*—"make" or "alter" *herself*, not command the State to make or alter. Such was the *duty* of Congress, under the constitution; let us examine her *act*, and see how it comports with her duty. "Members to which each State shall be entitled shall be elected by districts, composed of contiguous territory." The duty of Congress, if the emergency had occurred, is as plain as if it had been delineated by a sunbeam. Congress should have exercised its ultimate jurisdiction over the whole subject of "time, place, and manner," plainly declaring what regulations of what State it makes or alters, providing the details of its execution, and the manner and means of enforcing it, so as to secure to the people of such State their constitutional rights, thus thrown into abeyance, and to the federal Union a representation on the floor of Congress. Independent of the fact that the simple grant of a power carries with it the necessary and proper means to make it effectual, the manner in which this power is to be exercised, and the difficulty overcome is expressly stated. When, therefore, Congress is expressly required to do a thing herself, can she get the States to do it? Will it be contended, that a command to the State legislature is a sufficient performance of her own duty under the constitution? The question is, Has Congress, by the 2d section of the apportionment law, exercised her constitutional power of making the regulations? It is essential to the exercise of this power, either that Congress should "make such regulations" of itself—that is to take the entire power, and lay off, and establish the districts—or should alter the regulations already made by the States; so that, with those alterations, and the State laws upon the subject unrepealed, an election might be held. To make the regulations, Congress must exercise the power, so as to save the States from the performance of the duty. To *alter* the

regulations, Congress must alter or change something already made by the State legislatures. Neither of these things have been done. Congress has not made or formed the districts, nor has Congress altered any regulations previously made by the States. The power cannot be exercised by both at the same time; nor can it be divided, so as a part to be executed by one, and a part by the other. If the State legislatures exercise this power of prescribing "the time, place, and manner" of holding these elections, they must exercise their own authority, untrammelled by the dictation of Congress. And if Congress make these regulations, they must be made so as to be executed without the agency of the State legislatures. It is clear, that when Congress simply provides by law, that the several States shall be laid off into districts, to be composed of contiguous territory, it makes a provision which is dependent upon the action of the State legislature for its execution, while it is equally evident that she has failed to perform the duty which, in the case of an emergency, is enjoined upon her by the constitution. This principle was clearly established by the supreme court of the United States.—*See appendix, note* 15.

This brings us to the question, can Congress control the legislation of the States? Can it, whilst refusing to exercise a power, compel its exercise by the States? Call the act a command, or call it direction; call it what you please, you must attach State legislation to it. It is intended to operate upon the States in their corporate capacity, without creating the slightest obligation upon citizens; its force can never reach the people until it is at first obeyed by the States.

Does the constitution make the States the subjects or the agents of federal legislation?

Are the States the subjects, and can Congress command them? Can she negative the laws of the States, and consider as a nullity those acts, in force and unrepealed, under which the members now applying were elected? That question was decided on the 23d August, 1787, in the halls of the convention, when the following additional power was proposed to be vested in the legislature of the United States; "to negative all laws passed by the several States: interfering in the opinion of the legislature with the general interest and harmony of the Union."—(*See appendix, note* 16.)

No; though State legislatures have often declared acts of Congress unconstitutional, yet no case, I think, can be found in which Congress has assumed to pronounce State acts unconstitutional. Upon this point, it is a waste of time to enlarge; for, if Congress cannot, without an express grant of power from the States, exercise authority over her forts, magazines, and dock-yards, how can she presume to exercise authority over the legislature itself—the very source of that power? If it cannot, without the consent of the State, exercise control over one foot of its soil, how can it presume to control the judgment, fetter the will, and bind the conscience of sovereign power itself?

If not the *subjects*, does the constitution make the States the *agents* of federal legislation? and can Congress *direct* them? Can it delegate to them the right of legislating? This question was decided by the Supreme Court, in Wayman and Clark *vs.* Southard and Starr, that "the legislature cannot delegate its authority to legislate to any other person; nor can they legislate jointly with another body."—(*Appendix, note* 17.) Upon this point it is equally useless to dwell; for, if Congress cannot confer upon the State courts the power to try and punish a crime committed within the limits of its territory, or to enforce a penalty created under any law of Congress, it cannot confer upon the State legislatures the power to legislate over any subject, and particularly one of that civil, personal, and domestic character—the selection of their own representatives—which the people (the framers of our institutions) held too dear to be placed under the control of the federal government, (the government of general powers,) but which they wisely and specially confided to the governments nearer home—the legislatures of their respective States.

The States are not, then, the *subjects* or the *agents* of the federal government; and there is no power conferred on Congress, in any part of the constitution, to *command* or *direct* them to perform, or not to perform, any act of legislation. If such were the constitution, Congress might, in future, limit its own operation to the assertion of general principles, and leave to its subjects (the States) the drudgery of legislation necessary to carry those principles into effect; and, for all practical purposes, would reverse the relation between them, putting the agent in the place of the principal, and the principal in that of the agent, and which would degrade the States from the high and sovereign condition in which they have ever been held, under every form of their existence, to mere subordinate and ministerial agents. Is this the nature and theory of our government?

What is the great beauty of our system? its striking, original, purely American feature? that which constitutes its great conservative principle? that which distinguishes our government from all the short-lived republics which have preceded it? that which saves it from despotism, the unexceptionable fate of widely extended countries? and that which, in short, gives it strength and power enough to preserve the Union, if it comprised every foot of soil between the Atlantic and the Pacific, and yet has rendered it too weak to destroy that Union, if it consisted only of the two feeblest members in it?

It is our peculiar division of power into two parts, with distinct and independent governments, State and general, each regularly organized into departments, legislative, executive, and judicial, to carry their respective parts into effect. The one designed to regulate the objects in which each has a particular interest; the other to regulate the interests common to all; so that, however diversified by climate, production, or otherwise, may be the local interests of the respective States, they will meet the attention of their local governments, whilst their general interest, however insignificant or important, will not escape the vigilance of the general government. But is there any *division* of power, as in our boast, when the whole is concentrated in one? Will they be *distinct* and *independent* governments, as the constitution makes them, if one is to perform the mandates of the other? Should that one, indeed, be dignified with the name of *government*, whose most striking characteristic is only to be *governed*? And what is the object and design of these divisions of power, and distinct and independent governments, but to create checks and balances for the double security of the people? And will there be any checks and balances, and consequent security of the people, where the two are blended into one? No, it will totally subvert the whole character of our system. The two governments are co-ordinate departments of one single and integral whole; and if either department is annihilated, the whole system is de-

stroyed. The State governments are absolutely necessary to the form and spirit of the system; and to sacrifice them to the general government would not only be inadmissible, but totally inconsistent with the preservation of liberty.

But something more was necessary than the mere *division* of powers, and the formation of governments. It was essential that these powers and governments should not only be distinct and independent in name, but be distinct and independent in *operation*. The former would constitute a beautiful system in theory, but one ruinous in practice. This we had been taught under the confederation; and this it was the object of the constitution to amend. This was the last touch, the finishing stroke, to give perfection to the system; that instead of acting one on the other government, they should both act on individuals; that the federal government should execute its laws, not through State legislatures, but immediately and directly on the people. The perpetuity of the general government, and the union and harmony of the States essentially require—

That federal and State powers should move and act in their respective orbits.

That the legislative enactments of the general government should operate directly on the people of the States, instead of their legislatures.

The existence of these two principles (if they may be called such, instead of different qualifications of the same great principle) was not only essential, but it was also necessary, that the existence of them should be concurrent. History abounds with examples of the republics of antiquity, wherein the one or the other prevailed; but the single possession of either proved but a feeble tenure to liberty. In fact, the inefficiency of the one without the other our ancestors themselves had fully experienced—the one under the articles of confederation, and the other under the colonial governments which preceded it.

Strike out the *former* provision, and our consolidated republic instantly degenerates into a military despotism. Strike out the *latter*, and our federal government immediately dwindles into a miserably inefficient league. Strike out the former, and the country suffers at once a *violent* death. Strike out the *latter*, and it languishes, and dies a *natural* death, from its own enfeebled constitution.

And what does the second section of the apportionment law propose, but the annihilation of both these great principles. It does not confine federal and State powers to their respective orbits, because it permits the former to usurp the rights expressly reserved to the latter. It does not preserve the operations of the general government directly on the people, because it sanctions its operations on the legislatures of the States. Thus have I attempted to sustain my second ground, viz.; that even if Congress had the power, the manner of its exercise is unconstitutional, while this point mutually supports and is supported by the third proposition, or characteristic of government, which I deduced in the opening, from the nature of our government, while it should give force to our construction, viz:

That the government of the Union is a complete government for the ends for which it was created; it can accomplish all its legitimate objects without the legislative aid of any other body; and has therefore no reason or right to command or direct the legislation of the States.

But aside from the constitutional question—the question of the constitutionality of the power in Congress, and that of the constitutionality of the manner of its operation—

Would the exercise of the power be *expedient*? I think not, for the reasons:

Because its exercise was uncalled for.

It is destructive of the rights of the States.

It is destructive of the rights of the people.

It was uncalled for. Has there been a single voice of complaint uttered against a practice which has been in existence from the commencement of the government to the present time? What is the evil it is designed to remedy? *The general-ticket system* of election. If that practice was wrong, or attended with any evil effect in its progress, is it likely it would have commenced with the very beginning of the government, when its framers were in life to have corrected it, and to have continued for upwards of fifty years without a single effort having been made before to correct it?

Supposing the power to be untrammeled by a single doubt, after it has lain dormant for so many years, through so many scenes of difficulty and danger, without an occasion for its exercise: is it wise and politic, in these days of profound peace and general repose, to assume its exercise without a single petition for redress, and without the first murmur of discontent? But its exercise is attempted to be justified—and it is the only reason I have heard assumed—on the ground of *uniformity*. If *uniformity* is such a virtue, why not have it in everything connected with elections? Why not have uniformity as to qualifications of the electors? and uniformity as to the details of the elections of representatives to this House? Why not have uniformity as to the time, place, and manner of voting for electors of President? And, above all, why not have had uniformity in the criminal jurisprudence of the country? Why have left all these important considerations to the determination of "unwise and improvident States?" Why are these things so? For the reason that uniformity could not be attained without overriding the laws of the States; and because it was a principle which actuated the statesmen that formed the constitution, never to encroach upon any prerogative which the States could separately exercise. The very question of uniformity was presented to the convention, and there deliberately discussed and decided. "Two modes of providing for the right of suffrage, in the choice of representatives, were presented to the consideration of that body. One was, to devise some plan which should operate uniformly in all the States, on a common principle; the other was, to conform to the existing diversities in the the States." In remarking upon the clause in the constitution, which was finally adopted, the Federalist has remarked: "The provision made by the convention appears to be the best that lay within their option." "It must be satisfactory to every State, because it is conformable to the standard already established by the State itself."—*See appendix, note* 18.

But why do I waste the time of this House in dwelling upon these conjured evils? Are they evils at all? and if they are, can they be remedied by the law? And if they are evils, and can be remedied, will they be compensation sufficient for the utter destruction of the constitution, for trampling it in the dust, and usurping, in defiance of it, by direct opposition or ingenious construction, powers that the history of the convention proves, beyond all doubt, were never meant to be granted?

Inexpedient to exercise it, because destructive of the rights of the States.

That the exercise of this power would be destructive of the rights of the States, has been already shown under the preceding branches of the argument, in Congress having usurped one of the most important rights reserved to them in the constitution; and then, in its exercise, making menials of them to "do their bidding." That such would be the effect of this very provision, was foreseen and pronounced at the time of its adoption, by some of the most jealous and vigilant sentinels over the rights of the States. Luther Martin, in his report to the legislature of Maryland, not only utters his prophetic warnings of the danger, but charges its construction to that obvious intent. "A provision," he says, "expressly looking forward to, and I have no doubt designed for, the utter extinction and abolition of all State governments."—(*See appendix, note* 19.) And we find that, among the objections which determined Mr. Gerry, of Massachusetts, to withhold his name from the constitution, was the power of Congress over the places of election.—(*See appendix, note* 20.) So cautious were the State rights men of the convention, that even a *contingent* power for the preservation of the government, (in which light the provision was *alone* considered at that time,) they, for the fear of its abuse to the injury of the States, were unwilling to intrust it to the hands of Congress. And shall we now, at this distant day, surrender, without a cause and without a struggle, those rights in which abide the only safety for the liberties of the people, and the only guaranty for the perpetuity of the Union?—rights which, in the convention, Mr. Madison said he would "preserve with the same care that he would trials by jury;" and rights on which, as Judge Ellsworth there said, "his happiness as much depended as a new-born infant depends upon its mother for nourishment."—(*See appendix,note* 21.) No. Independent of the benefits to the country from State rights, which I hold to be incalculable, I look with peculiar reverence upon this palladium of our liberties; because I think I can discern in its creation the impress of Heaven's hand. It was the pride of the ancient Roman to trace the glory of his country to celestial origin; but it would scarcely occur to the American of the present day, with how much *more* ease and more truth *he* is enabled to trace the glory of *his* country to a *similar source*. I agree with the sentiment of the venerable Franklin, when moving that the deliberations of the convention be opened with prayer, that "God governs in the affairs of men;" (*See appendix, note* 22,) or, as the idea has been poetically expressed, "There's a Divinity which shapes our ends." 'Tis true, the whole edifice of American liberty is the work of the Supreme hand; but if there is any part of the structure in which the finger of Heaven seems so manifest as to be discernible to the finite visions of humanity, it is those portions which are known as and constitute the separate and reserved rights of the States. What but Providential interposition could have produced the result that emigants of the same nation, embarking from the same shore, actuated by the same ends, bound to the same land,—instead of being united, should have separated in their settlemente near 1,000 miles? What but the hand of Heaven could have directed the opposing breezes which propelled one bark upon "the sunny shores" of Carolina, and the other upon the "ice-bound coast" of Plymouth? And to what mighty results has not this apparently unimportant circumstance led? Had it happened, as it would have seemed most wise and natural on the part of the early emigrants, to have clustered together in a savage wilderness, for mutual protection and support, the country would have gradually enlarged from the single point of settlement, the population would have expanded into one undistinguished mass, without divisions of rights; without a "breakwater to arrest the angry waves of power;" with nothing to confederate and nothing to preserve a confederation; and the consolidated republic could have been held together only by the sternest despotism, or would have been burst to fragments by conflicting interests. Whereas, the several colonies being separate and distinct in their settlement—separate and distinct in their government—separate and distinct in their political rights—this independent and distinctive character became so completely a law of their nature, that, notwithstanding the great sacrifices they were mutually called on to make for the "common defence and general welfare," these peculiar rights were never parted with; they were "published" in their "declaration," "retained" in their "confederation," "reserved" in their "constitution," and will be surrendered only in their destruction. There are those who, in judging of events, are sufficiently ortherdox to attribute those of momentous interest to "the first great cause," whilst matters, seemingly of minor importance, they heretically ascribe to the operations of chance. That "God created the heavens and the earth," they instantly and cheerfully admit; and yet they inconsiderately set down to accident that other declaration that "without *His* will not a sparrow falleth to the ground;" when they both rest upon the same high and sacred authority. There may be those who look upon the glory of their country, and every other object except their own individual success, as a matter of minor importance, and from whom no wiser conclusion on the facts could be expected; but let the patriotic and reflecting man consider the subject in all its bearings; the peculiar features of our system; the mode in which alone these features could be formed; the manner in which they were accomplished, contrary to the ordinary conduct of men, and if he can ascribe to chance the origin of State rights, the glory of the country, then, indeed, may he be expected to pronounce the inconceivable magnificence and splendor of God's creation but chance; the standing still of the sun in Gibeon, and the moon in the valley of Ajalon, or the awful terrors of the boundless, fathomless, world-destroying deluge as but *mere chance*.

Its exercise would be destructive to the rights of the people.

In what kind of a government do we live? and what is the principle upon which it is based? It is a representative government; and the principle is, that all power is in the people; and that they have the capacity as well as right of self-government. To prosecute this self-government, the people, then, must have a representation. But what does this law provide? It, in substance, thus addresses the State legislatures: "We order you to pass laws districting your respective States. We do not choose to do this ourselves, although we possess the power; and, therefore, we command you to do it for us, under the *penalty*, in case of disobedience, of having your *people's chosen representatives excluded from their seats*." Is such conduct in accordance with the nature and principles of the government, as I have just

stated them? Is it consistent with the right of representation, to be *excluded* from representation? consistent with their possession of *all* power, to be *commanded?* or consistent with their right *capacity* for *self-government*, to be *governed?* So sure as such are the nature and principles of the government, and so sure as such *is* the law in dispute, just so sure are they totally inconsistent with, and subversive of each other. They cannot exist together. Either the government must stand, or the law fall; or the law must stand, and the government fall. Will the people pause, to make a question in such a case? Will they submit to such a tone from their servants, a *branch* only of their *agency?* Will they quietly submit to disfranchisement?

The only branch of the whole government which the people have reserved to themselves the right of electing *directly*, is the first branch of the national legislature. The members of this House are particularly the representatives of the people. And shall these particular representatives be excluded from all participation in the government? Shall the people themselves, through their representatives, be prohibited from governing themselves? Shall the people be compelled to remain unrepresented, until the legislature of the States shall obey the mandate of Congress?—a quarrel for power between two agents; and, like similar cases of daily occurrence in private life, the principal the only sufferer.

Placing out of view the question of the constitutionality of the power of Congress to district the States, or that of ordering the States to district themselves, putting aside the power to do it, the act itself has not been done; the duty has not been performed; the State has not been districted. Congress says she has the power to do it; but she does not presume to omnipotence—"to will only, and it is done." Before she can expect to derive any benefit from an act, she must first perform the act. The power in question, like all the other sleeping powers conferred by the constitution on Congress, must remain inoperative—lie dead—until put in operation—called into existence by the necessary legislative enactments.

It cannot be denied that no regulations have been made by Congress touching the election of representatives; neither have any regulations heretofore existing been altered; and of course the conclusion is irresistible, the power still sleeps; and if Congress, from the inefficiency of her legislation or other cause, has failed to touch the dead corse of inanimate power, and to call it forth into life and activity, are the people, on this account, to be deprived of all representation? But, says Congress, we have ordered the States, and they have refused obedience to our mandate. Is our sovereign will to be thus frustrated, our dignity insulted? and what say the States in reply to Congress? Show us that line in the constitution which makes us the servants of the general government? *You cannot*; but search the instrument, and you *will* find the power over elections given to us, and so long as we continue to exercise it in obedience to the direction of the constitution, you cannot touch it; you might as well attempt to take away the commission of a judge, appointed during good behavior, where there was no charge against him, as to presume to take from us our rights before we, by our fault, have deprived ourselves of them. Justice, as we have already shown, is with the States; but that is not now the question. The consideration at present is, whether the people who are the best, as they are the only, judges of their true interests, will permit themselves to be the only sufferers in the contest between their own agents?

Will the people of the States calmly surrender their representation in Congress? will the acts of Congress be respected in those States whose representatives have been repudiated, whose voice has been smothered? whose participation in the legislative councils has been sternly rejected? What led to the revolution, but that representation and taxation did not go together? What was, in the convention, most solemnly asserted ought to go together; and what has always been considered an indisputable axiom of political government? It is that representation follows taxation, as legitimately as protection does allegiance; that they are reciprocal—the one ceasing when the other is withdrawn. If the people of these States threw off the last government under which they lived for this cause, is it not reasonable to suppose that, the same causes operating, they will throw off this?

If they failed not for this very cause to throw off a government which they were bound by birth to obey and defend, will they hesitate, for the same reason, to cast aside one of their own formation; and which they have found to fall short of the end of its creation?

No, sir. Upwards of 50 years ago, it was foreseen and foretold; upwards of half a century since, before the constitution was called into being, when divested of the excitement which such a cause was well calculated to produce, did the prophetic voice of Hamilton, when considering this clause, and anticipating the very abuse which has occurred, declare, "It is not difficult to conceive that this characteristic right of freedom may, in certain turbulent and factious seasons, be violated in respect to a particular class of citizens, by a victorious majority; but that so fundamental a privilege, in a country situated and enlightened as this, should be invaded to the prejudice of the great mass of the people, by the deliberate policy of the government, *without* occasioning a popular *revolution*, is altogether *inconceivable and incredible.*"—(*See appendix, note* 23.) When "all power is originally vested in the people, and all free governments are founded on their authority," and are instituted for their peace, safety, and happiness; and "whenever one form of government becomes subversive of these ends, as it is the right of the people to alter or abolish it," is it presuming too much that they will not hesitate? "When they are suffering repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these States"—when they are "compelled to relinquish the right of representation in the legislature—"a right inestimable to freemen, and formidable to tyrants only"—when compelled to submit to a course "abolishing our most valuable laws, and altering fundamentally the forms of our government,"—is it asserting too much to say that the people will not submit? No. I think I hear them solemnly and firmly exclaiming, when "we have warned them from time to time of attempts of their legislature to extend an *unwarrantable* jurisdiction over us"—when "we have appealed to their native justice and magnanimity, and have conjured them, by the ties of a common kindred, to disavow these usurpations, which would inevitably interrupt our connexions and correspondence"—and when they too have been deaf to the voice of justice and consanguinity," "we must therefore acquiesce in the necessity which denounces our separation." "We,

the people [of the injured States,] will, appealing to the supreme judge of the world for the rectitude of our intentions, in the name, and by the authority, of [these injured States,] solemnly publish and declare that these [respective political bodies] are, and of right ought to be free and independent States;" "and that, for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor."—*Appendix, note* 24.

This is not fancy; it is fact. So sure as every constitution in these United States has assumed, as a fundamental principle, the right of the people of the State to alter or abolish their government—so sure as Americans have no relish for oppression and tyranny, and will not willingly be deprived of their dearest privileges,—so sure, in short, as they "know their rights, and knowing, dare maintain them," so sure it will be done; as well for reasons just stated, as for the additional considerations contained in the last proposition, which I laid down in my opening, and which mutually sustains, and is sustained, by this branch of the argument, viz:

That in conflicts between the general and State governments, as to the construction of power, there is no common umpire but the people; that they are the permanent tribunal and source of political power; and, though they may often delegate portions of that power, must still remain the ultimate arbiter as they were the primary fountain of all knowledge and of all authority.

The question is with the House. I present to its members the only alternative. I leave it to them to pronounce whether the constitution or the law shall stand—whether the constitution shall be violated, and the law prevail, or the constitution be preserved, and the law annulled. The prejudices of the day will soon pass away; the passions which may have spoken this law into being will soon moulder in the dust; but the construction now about to be placed on this constitutional provision will perish only with the instrument; the consequences of the judgment about be pronounced will be coexistent with the republic. The government established by our fathers, though most admirable, is not perfect, and will exist no longer than whilst a portion of its genuine, original spirit—a spirit of conciliation and compromise—a spirit careful not to exceed, and equally careful not to relinquish its just powers—shall continue to animate the public councils. We may boast of our division of powers, and vainly imagine that our privileges will be eternal; but if that spirit has fled, the constitution will follow, and our government, at the very moment when it is praised and commended all over the world, extolled as an exemplar—a model—the nearest approach of mortals to perfect political wisdom,—must be blotted from the roll of nations.

If these things must be, and so your judgment in favor of the law will most emphatically assert, that such an act should need nothing to heighten its enormity, let it not be the work of ignoble hands; let it not be perpetrated by those who are ignorant of the exalted rights and unparalleled freedom they enjoy. But let it be done by the collected political wisdom of the land. If the castle must be surrendered, let it be betrayed by those who are appointed to defend it. If the edifice of American liberty must be demolished, let the task be committed to those to whom are intrusted its preservation. Let it be commenced in a city bearing the once venerated name of Washington. Let the members of this House tear that constitution to tatters, and scatter its fragments to the breeze; let the legislators of the country scale the Capitol, and with runthless hand snatch the banner from its dome. Having done this, let them, from their unholy elevation, proclaim to an astonished world the cause of our downfall, and true to the fiendish character which could alone perpetrate such an act, let them not boldly assume the responsibility, but let them basely ascribe our ruin to the ignorance of our fathers, in presuming it unnecessary to prohibit the general government—the *creature*—from the destruction of the States—its *creators*. Let them blazon to the world the folly of those ancestors, in supposing, like the ancient Roman, that they were preparing a constitution for the heirs of their virtue and their patriotism, instead of for their own degenerate descendants. That as the Roman, judging from the purity of his own breast, concluded that "no law against parricide would be wanted in the republic," the American sage, from the same cause, was betrayed into the same error, in supposing it unnecessary to guard the offspring against imbruing its hands in the life-blood of the parent.

APPENDIX.

Note 1.—See Mr. Madison's letter to Edward Everett, dated Montpelier, August, 1830.

Note 2.—See Federalist, No. 23, 45, 14. Jefferson's Memoirs, 4th vol., 396.

Note 3.—See Federalist, No. 44.

Note 4.—See 1st Elliott's Debates, p. 63 and 69.

Note 5.—See 3d Elliott's Debates, p. 65 and 66.

Note 6.—See 2d Madison Papers, 1226.

Note 7.—See 2d Madison Papers, 1229.

Note 8.—See 3d Madison Papers, 1282.

Note 9. See 2d Elliott's Debates, p. 39.—Mr. Nicholas's speech.

Note 10.—See Federalist, No. 59—by Mr. Hamilton.

Note 11.—See 1st Elliott's Debates, p. 137, '8—for Mr. Adams's opinion. See 1st Elliott's Debates, p. 288 '9—for Mr Jay's opinion.

Note 12—."The legislature of each State prescribes the times, places, and manner of holding elections, subject, however, to the interference and control of Congress, which is permitted them for the sake of their own preservation, and which it is to be presumed they will never be disposed to exercise, except when any State shall neglect or refuse to make adequate provision for the purpose."—1 Kent's Commentaries, p 232.

"The constitution gives to the State legislatures the power to regulate the time, place, and manner of holding elections; and this will be so desirable a boon in their possession, on account of their ability to adapt the regulation, from time to time, to the peculiar local or political convenience of the States, that its representatives in Congress will not be brought to assent to any general system by Congress, unless from an extreme necessity, or a very urgent exigency. Indeed, the danger rather is, that, when such necessity or exigency actually arises, the measure will be postponed, and perhaps defeated, by the unpopularity of the exercise of the power. All the States will, under common circumstances, have a local interest, and local pride, in preventing any interference by Congress; and it is incredible that this influence should not be felt, as well in the Senate as in the House. It is not too much, therefore, to presume that it will not be resorted to by Congress until there has been some extraordinary abuse or danger in leaving it to the discretion of the States respectively."

"A period of forty years has since passed by, without any attempt by Congress to make any regulations, or interfere, in the slightest degree, with the election of members of Congress. If, therefore, experience can demonstrate anything, it is the entire safety of the power in Congress, which it is scarcely possible (reasoning from the past) should be exerted, unless upon very urgent occasions. The States now regulate the time, place, and the manner of elections, in a practical sense, exclusively."—2 *Story's Com., p.* 281.

Note 13.—Ratifications of the constitution.

STATE OF SOUTH CAROLINA.—"And whereas it is essential to

the preservation of the rights reserved to the several States, and the freedom of the people, under the operations of a general government, that the right right of prescribing the manner, time, and places of holding the elections to the federal legislature, should be forever inseparably annexed to the sovereignty of the several States; this convention doth declare, that the same ought to remain, to all posterity, a perpetual and fundamental right in the local, exclusive of the interference of the general government, except in cases where the legislatures of the States shall refuse or neglect to perform and fulfil the same, according to the tenor of the said constitution.

STATE OF VIRGINIA.—"That Congress shall not alter, modify, or interfere in the times, places, or manner of holding elections for senators and representatives, or either of them, except when the legislature of any State shall neglect, refuse, or be disabled, by invasion or rebellion, to prescribe the same."

STATE OF NEW YORK.—"That the Congress shall not make or alter any regulation in any State respecting the times, places, and manner of holding elections for senators or representatives, unless the legislature of such State shall neglect or refuse to make laws or regulations for the purpose, or from any circumstances be incapable of making the same; and then only until the legislature of such State shall make provision in the premises."

STATE OF NORTH CAROLINA —"That the Congress shall not alter, modify, or interfere in the times, places, or manner of holding elections for senators and representatives, or either of them, except when the legislature of any State shall neglect, refuse, or be disabled by invasion or rebellion to prescribe the same."

STATE OF RHODE ISLAND.—"That the Congress shall not alter, modify, or interfere in the times, places, or manner of holding elections for senators and representatives, or either of them, except when the legislature of any State shall neglect, refuse, or be disabled by invasion or rebellion to prescribe the same."

STATE OF NEW HAMPSHIRE.—Word for word as those of Massachusetts.

Note 14.—During the debate on the bill to refund the fine imposed on General Jackson, Mr. STEPHENS of Georgia remarked that "the judge, (Hall,) on that occasion, showed more moral firmness than did the general who defended the city."—See Congressional Globe, p. 87.

Note 15.—In the case of Houston *vs.* Moore, 5 Wheat. Rep., 1, 21, 22, it was expressly held that when Congress have exercised a power over a particular subject given them by the constitution, it is not competent for State legislation to add to the provisions of Congress upon that subject; for that the will of Congress upon the whole subject is as clearly established by what it had not declared, as by what it has expressed.—16 Peters, 618.

Note 16.—Sec. 2 Madison Papers, 816.

Note 17.—Sec. 10 Wheaton's Reports, 1.

Note 18.—See Federalist, No. 52; 2 Story's Com., 284.

Note 19.—See Luther Martin's Report to the Convention of Maryland, secret proceedings of convention, p. 42.

Note 20.—See 3 Madison Papers, appendix 8.

Note 21.—See Madison Papers.

Note 22.—See 2 Madison Papers, 985.

Note 23.—See Federalist, No. 60.

Note 24. See Declaration of Independence.